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A REPLY

TO THE

REPORT OF A COMMITTEE

OF THOSE

OPPOSED TO THE LICENSE LAW.

C. E. G. Breck
June 2. 1897

It having been thought expedient that some public notice should be taken of the Report of those opposed to the License Law, a meeting of citizens friendly to the Law, was convened at the Savings Bank building to consider the subject; and, at an adjourned meeting at the same place on the 2d inst., the following Report, offered by a committee previously appointed, was unanimously adopted and directed to be printed.

Jonathan Phillips, *Chairman.*

George S. Hillard, *Secretary.*

Boston, July 9, 1838.

REPORT.

The opponents of the recently enacted License Law in this Commonwealth, have communicated their sentiments to the public in the form of certain resolutions and a Report, which the friends of the Law deem it proper to notice, rather on account of the respectable social position of the gentlemen who have subscribed the Report, than the novelty of its views or the force of its reasoning. As the Report derives most of its weight from the names of those by whom it was drawn up and subscribed, we think that the friends of Temperance, who approve the law and are prepared to sustain it, are fairly entitled to all the benefit which may be derived from the fact, that this is a question in which the subscribers to the Report have a direct personal interest. It is a matter of public notoriety, that every one of those gentlemen is engaged in the business of furnishing spirituous liquors to the community, either by distillation, exportation or importation, by wholesale or retail; and though we do not venture to pronounce their occupation an immoral one, since the criterion of morality is not the thing

done, so much as the motive and conscience of the doer, which are known only to the "Searcher of hearts," yet the slightest knowledge of the laws of the human mind, and the most limited observation of actual life, are enough to show us how easy it is for men to believe what they desire to believe,—how naturally "the wish is father to the thought," and how invariably the opinions of men are shaped and moulded by their daily habits, their common pursuits and familiar associations. It is within the memory of man that the morality of the slave trade was defended, and doubtless conscientiously so, by men as estimable and respectable as any of those who have signed this Report; and many other parallel cases might be drawn from the annals of human infirmity. We mention this, not from a wish to mingle the leaven of personality with our discussion, or to make our neighbor odious by kindling a prejudice against the calling by which he earns his bread. We should not have adverted to the fact, were the circulation of the Report to be confined to this city, where every man's employment is known to every man; but it will doubtless be distributed throughout the Commonwealth and generally read, and its claims to attention will every where be enforced by the emphatic statement that it is signed by men inferior in standing and character to none in the city; and although in all cases arguments addressed to the reason ought to be weighed without reference to the source from which they come, yet, in point of fact, men are so made, that the argument of a "saint in crape" is twice as good as that of a "saint in lawn." We wish, therefore, the whole truth to be made known, and that wherever the Report may be read, it may be understood that it presents the views of men whose occupation disqualifies them from examining the subject impartially and dispassionately.

We now proceed to an examination of the Report itself.

After some preliminary observations on the momentous nature of the question to be considered, about which, of course, there can be no dispute, it proceeds to state "that the subject is important, not only on account of the immediate prejudicial effect of the law upon the interests of men who have, hitherto, conscientiously believed that they were engaged in a business which, if honestly conducted, was a reputable, an honorable and a necessary business, sanctioned by immemorial precedent and example; but it is also very important, as it affects or may bear upon certain fundamental principles, personal and political rights, and the inalienable freedom of man, in a manner consonant rather with the genius and spirit of a despotic, than of a republican government." In this sentence we have the pith and substance of the principal objections urged against the law,—that it is prejudicial to the interests of certain persons in the community,—that it assails the natural and inalienable rights of the citizen,—and is contrary to the spirit, if not the letter, of the federal and state constitutions, which latter objection is subsequently dwelt upon at considerable length and with great earnestness. That the operation of the law will be to diminish the profits of all who are engaged in the manufacture and sale of ardent spirits, is probably true, and this may be a sufficient reason why they should dislike it, but none why the public at large should be dissatisfied with it. The enactment of the law proves that the public welfare required it, and that the majority will be gainers thereby, or at least that the legislature so thought; and it is the duty of a good citizen to submit without a murmur to a provision which is a benefit to the community in general, though injurious to him individually. The vendors and

manufacturers of spirituous liquors had their representatives in the legislature, who urged, as an argument against the bill, that it would injure their business; but this partial evil was not deemed sufficient to counterbalance the general good.

The main objection to the law, resting upon its alleged interference with natural rights, is not stated with that precision which so serious a charge demands. In a production like this Report, addressed to the popular mind, we do not expect the rigor of mathematical demonstration, or the close and elaborate reasoning of a legal argument, but we have a right to require a distinct statement of the particular rights which this law interferes with, and of the manner in which it so interferes with them. Instead of this we are entertained with two or three indignant and declamatory paragraphs against the principle of sumptuary laws, and against legislative interference with domestic concerns; and the people of Massachusetts are asked, with great emphasis, whether "they have no homebred and fireside rights, which are not to be invaded and subjected to legislative surveillance and control." We object to this mode of reasoning, or rather, to this vague and loose declamation. As lovers of truth, and friends of fair discussion, we protest against this attempt to enlist the prejudices of the people against the law, by branding it as an attack upon the rights of freemen, and by assailing it with inflammatory language, calculated to kindle the passions of those who are not accustomed to examine carefully and reflect patiently. In reading this portion of the Report, it is difficult to believe that all this fine passion is wasted upon a provision to regulate the sale of ardent spirits. We should have supposed, had we read the Report without knowing its origin, that it had been called forth by a law taking away the right of trial by jury in crimi-

nal cases, or repealing the *habeas corpus* act. The committee, at the outset, beg the very question at issue. We deny that there is any thing of the nature of a sumptuary act in the provision under consideration. We deny that it interferes with the management of one's domestic concerns, or with "homebred, fireside rights." We deny that it undertakes to prescribe what we shall eat and what we shall drink. It simply forbids a particular form of traffic, which long experience has shown to be attended with unqualified evil. It does not prohibit the use of the article as a drink, but merely prescribes the limits to the quantity which may be bought at one time. Every one may buy it, provided he will buy fifteen gallons at a time. There is no more of interference with natural rights in such a law, than in two-thirds of those which make up the statute book. The very basis upon which civil society rests is a surrender of natural rights. Men surrender them as an equivalent for the protection which government and society afford, and it is the duty as well as the right of governments so to regulate the employments of the citizens, as to consult the good of the whole. Some it may forbid altogether, and others it may restrain and limit. If this law be objectionable on this ground, what will be said as to laws forbidding the sale of lottery tickets, regulating the sale of gunpowder, restraining the interest of money, prohibiting private banking, protecting game, and innumerable others which might be cited? The principle in all these is the same. They all interfere with natural right, and are for the public good, and the principle which should expunge one, should expunge the whole. The committee say, "If government may dictate what we may and may not eat and drink, where is the limit to the power assumed?" To this significant query we would reply, that government may not and cannot dictate what

we may and may not eat and drink, and that the obvious limit to the power is the impossibility of using it. But suppose that the community were visited by a contagious disorder, and that certain fruits and vegetables, harmless under ordinary circumstances, became deleterious at that particular time, on account of their immediate tendency to bring on the disease, would it not be a perfectly legitimate exercise of authority to prohibit the public sale of these articles, although the consumption of them as food could not be prevented; and suppose that the vendors of these articles should hold a meeting, pass a set of clamorous resolutions, and assail the regulation in an elaborate report, as an infringement of natural right, would they not be considered as men bereft of their wits?

The alleged unconstitutionality of the law we shall touch upon very briefly, as this is not the place to discuss it, and we are not addressing the tribunal proper to decide it. The presumption is in favor of its constitutionality, and the burden of proof is on him who denies it. The legislature which passed it may fairly be supposed better qualified to pronounce upon this question than the twelve gentlemen who have signed this Report. The law is not contrary to the State constitution, unless the passage therein prohibiting such enactments is distinctly shown. The legislative power is conferred in general terms, and is omnipotent, except in those particular cases where it is controlled. Neither is this law contrary to the constitution of the United States, unless a clause can be shewn therein, which directly or indirectly prohibits the exercise of this power to the States, or gives it exclusively to the United States.

The Report goes on to state as follows: "We are opposed to all precipitate innovations, by compulsory means, upon the long established usages, the settled

habits, and the regular pursuits and occupations of men." If this be the enunciation merely of an abstract proposition, we are ready to assent to it, provided always that the usages, habits and pursuits be praiseworthy, lawful and good, otherwise the sooner they are changed the better. We believe there is just as much wisdom in getting out of the fire by degrees, as in abandoning a bad habit, or an immoral occupation, by degrees. If, however, it is meant to be insinuated that the present measure is one of those "precipitate innovations," we deny the fact and challenge proof thereof. Laws regulating the traffic in ardent spirits have been familiar to the legislature of this State from time immemorial, and the present measure is but the taking of a few further steps on a road on which we have long been travelling. It has long been before the public; it has been discussed in Temperance societies, and Temperance conventions, and in the public prints. All the arguments brought against it have been answered again and again, and it was finally adopted by a large majority, in a most intelligent legislature, after a thorough and protracted debate. And more than all the rest, the experiment has already been tried in several counties of the Commonwealth, and with complete success, and this fact was undoubtedly a strong argument in its favor with the legislature, inducing them to extend to the whole Commonwealth a system which had been found to work so well in a considerable portion of it.

Another objection brought against the law is, that it is opposed to public sentiment, and consequently inexpedient; and that an attempt to enforce it will be attended with dangerous consequences; and that "some men will drink from principle, not merely to gratify appetite, but to vindicate a right." This certainly sug-

gests a new view of the operation of moral principle—one for which the committee deserve the thanks of every one who "puts an enemy into his mouth to steal away his brains." "How convenient," says Dr. Franklin, "does it prove to be a rational animal that knows how to find or invent a plausible pretext for whatever it has an inclination to do." Hereafter all who drink, will drink from principle, which will be in exact proportion to the quantity consumed; and thus the highest triumph and perfection of moral principle will be found in some unfortunate outcast, whose strong sense of moral obligation has not only deprived him of reason, sense and memory, but of the power of voluntary motion.

The signers of this Report may be "sincere friends to Temperance," but we cannot think them so well qualified to judge of the expediency of this or that particular measure in the Temperance reform, as those whose interest in the cause has been proved by their labors and sacrifices in its behalf; and we wonder at the confidence with which they maintain that a law is not in accordance with public sentiment, when it was passed by a large majority of a legislature, which so exactly represents the public mind as that of our State. They greatly deceive themselves, if they imagine that a few vendors of ardent spirits, clamorous at the prospect of diminished gains, are the representatives of the public opinion of the Commonwealth of Massachusetts. We feel assured, on the other hand, that the law was carried through the legislature by the irresistible force of public opinion, and that it will in like manner be sustained by it. As these gentlemen are "sincere friends of Temperance," they will be gratified to learn that their fears of the dangerous consequences which may follow an attempt to enforce this law, are deemed wholly groundless by those who

are best qualified to form an opinion upon the subject. The dangers of a reaction, and the evils of going too fast and too far, are considerations to be taken into account in all moral reforms; but, in the present case, they are idle terrors, and we contemplate the probable working of the law without any uneasy sense of apprehension. We believe that the community is morally ripe for the change.

There are some observations in the Report, from which we are not inclined to dissent, but are unable to perceive any particular connection between them and the recently enacted License Law. The cause of Temperance, like all other good causes, has suffered from the imprudent zeal of some of its friends, and no men can be more strongly opposed than we are to "reproachful epithets, uncharitable imputations, and violent denunciations." We know that the mind of man is beyond the reach of compulsory laws, and we believe that attempts to propagate the doctrines of morality and religion by fire and steel, are as futile as they are wicked; but in the present instance, it is the change in men's minds which has produced the law. We are ready to admit that the highest moral state to which a man can attain, is that which enables him to pass unharmed through the fiercest flame of temptation, in which he constantly obeys the self-imposed law of duty, and, with perfect liberty of choice, prefers the good to the evil, and sacrifices the lower impulse to the higher. Were all men so constituted, there would be no need of laws, as every one's own conscience would be a law to him, and make all inferior sanctions needless. But men of this description are the exception and not the rule, and we must take men as we find them, and do the best we can under existing circumstances. We do well to punish crimes after they

are committed: we do better to prevent them before. Government has no power over the heart and mind of man; it cannot cleanse the issues of life; it cannot eradicate a bad principle and plant a good one. It is an imperfect instrument at best, and deals only with coarse, material interests. Its legitimate jurisdiction is over the overt act, the outward manifestation of the evil impulse. Government, for instance, cannot prevent a man's being licentious, but it may suppress brothels, and prohibit the sale of indecent prints. Government cannot quench the spirit of gaming, but it may suppress gambling-houses, and prohibit the sale of lottery tickets. Government cannot slake the unnatural thirst of the drunkard, but it may suppress those places of temptation, which by their number and accessibleness, are continually provoking the commission of the crime of drunkenness. This is an offence which comes peculiarly within the cognizance of the State. Its consequences do not cease with the offender himself, but the sins of the guilty are visited upon the innocent also. Where the head of a family is addicted to intemperate habits, the probability is, that his family will be neglected, and that poverty and suffering will make them desperate and reckless of public opinion; that his children will grow up without those habits of thrift and regular industry which will make them independent, and without that intellectual and moral training which will guard them against those temptations with which the path of life is beset. Thus drunkenness is the immediate parent of pauperism and crime, and the house of the drunkard is the nursery of the almshouse and the jail. No one will deny that among the paramount obligations of government is the prevention of pauperism and crime, and if it be established as an incontestible fact, that drunkenness

will not and cannot be prevented, so long as the practice of selling liquor in small quantities is allowed, it follows as clearly as an inference in mathematics, that government is false to its trust, if it do not forbid the practice. In so doing, it merely exercises its just right and duty of self-protection and self-defence. That the community will be cursed with the evils of drunkenness, so long as the system of licenses continues, is the uniform testimony of all who have been led to investigate the subject. The power of habit, backed by the peculiar local association familiar to all, is too strong for the moral sense, enfeebled by long indulgence; and even those who would gladly unclasp the fatal folds of the destroyer, find themselves unable to pass by the shop, or bar-room, where they have been accustomed to drink, without stopping. What, then, is to be done? Is this nuisance to be perpetually continued and tolerated? Is this fountain of disease and death to be kept forever flowing; or shall we apply the only effectual remedy, and remove from the unhappy victim of intemperance the temptation which he cannot resist, by suppressing the dram-seller's pernicious calling? And with what face can he come forward, assume the attitude of an injured man, declaim about his violated rights, and accuse the legislature of exercising usurped and unauthorized power? The plain statement of the question, extricated from the "Serbonian bog" of metaphysics in which the Committee would fain plunge it, and placed upon the firm earth of common sense, is, whether a man has a natural and inalienable right to sell spirituous liquor by the single glass; and this question we are ready to submit, either to the people of the Commonwealth, or of any of its courts of justice.

As we have before stated, we are sanguine in the belief, that this law will be attended with the most beneficial results to the cause of Temperance and the good of society. But we do not pretend to the gift of prophecy, and we may find that we have been mistaken, and have taken counsel too much of our hopes and our wishes. In that case, we shall cheerfully consent to such a modification of it, as shall most conduce to the interests of the cause which we have at heart. But had we been originally opposed to the law, we should deem it our duty, now that it has been enacted, to lend it a cheerful countenance and support; and we are pained to see gentlemen so respectable as the signers of that Report, presenting themselves as a *nucleus* around which the scattered elements of resistance to it may cluster. Under these circumstances, it becomes more than ever the imperative duty of the friends of the law, to meet this determined front of opposition, by as firm and resolute an attitude of defence. Believing it to be the final triumph and consummation of the good cause in which we feel so deep an interest, it will still be a dead letter, and worse than a dead letter, if it be not enforced. We must not feel that the battle has been fought, and the victory won, by the simple enactment of the law. We may not yet retire from the heat and dust of the conflict. The law must be carried into effect, and they who are disposed to trample upon it, must be made to understand that so long as it remains unrepealed, its provisions are not to be violated with impunity. To this object we must devote ourselves, as to a moral duty of the highest obligation, with the whole heart, the whole strength, and the whole mind; without heat or violence, but with that calm, deliberate resolve, which opposition shall not daunt, lukewarmness shall not dishearten, and threats

shall not intimidate; and we should doubt God's moral providence in the government of the world, did we not feel confident that His blessing would follow our efforts.

JONATHAN PHILLIPS,
JAMES SAVAGE,
EDWARD BROOKS,
WILLIAM LAWRENCE,
SAMUEL MAY,
SAMUEL DORR,
PLINY CUTLER,
GEORGE S. HILLARD,
EDMUND QUINCY,
BENJAMIN ABRAHAMS,
JOHN C. GRAY,
WILLIAM APPLETON,
LUTHER S. CUSHING,
AMASA WALKER,
EDMUND T. HASTINGS,
JAMES C. DUNN,
FRANCIS JACKSON,
THOMAS PATTEN,
LEWIS G. PRAY,
HORACE MANN,

Committee.